

House Bill 877

By: Representative Franklin of the 43rd

A BILL TO BE ENTITLED
AN ACT

To amend Title 50 of the Official Code of Georgia Annotated, relating to state government, so as to provide for the comprehensive regulation of federal tax funds; to provide for a short title; to provide for legislative findings; to provide for definitions; to create the federal tax fund panel and provide for its members, operation, powers, and duties; to create the federal tax fund and provide for its operation; to provide for powers, duties, responsibilities, and liabilities of state officials and state taxpayers in connection with the forgoing; to provide for related matters; to provide for applicability; to provide for use of certain funds; to provide for an effective date; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Title 50 of the Official Code of Georgia Annotated, relating to state government, is amended by adding a new chapter to read as follows:

"CHAPTER 37

50-37-1.

This chapter shall be known and may be cited as the 'State Authority and Federal Tax Funds Act.'

50-37-2.

(a) The Tenth Amendment to the Constitution of the United States of America states that '(t)he powers not delegated to the United States by the Constitution, or prohibited by it to the States, are reserved to the States respectively, or to the people.' The General Assembly finds that the Tenth Amendment to the Constitution of the United States of America defines the total scope of federal power as being that specifically stated in the Constitution of the United States of America and no more.

(b) The General Assembly finds that the federal government, its agencies or agents, or the United States Congress does not have the power under the Constitution of the United States of America to appropriate or otherwise expend funds for purposes that are outside the scope of the powers enumerated in the Constitution of the United States of America for the federal government.

(c) In light of the continuing unconstitutional federal expenditures, the state hereby reasserts its authority pursuant to the Tenth Amendment to the Constitution of the United States of America.

50-37-3.

As used in this chapter, the term:

(1) 'Director' means the director of the Office of Treasury and Fiscal Services;

(2) 'Federal tax' means any tax that a person in this state is required to pay under Title 26 of the United States Code;

(3) 'Federal Tax Fund' means the escrow account created by Code Section 50-37-5;

(4) 'Panel' means the Federal Tax Fund Panel created in Code Section 50-37-4; and

(5) 'Person' means natural persons, corporations, partnerships, limited liability companies, associations, and other legal entities.

50-37-4.

(a) There is created the Federal Tax Fund Panel which shall consist of six members of the General Assembly, none of which shall be members of the State Bar of Georgia. Three members shall be appointed by the Speaker of the House of Representatives and three members shall be appointed by the President of the Senate.

(b) In even numbered years the Speaker shall appoint one of the members of the Panel as chairman, and in odd numbered years the Lieutenant Governor shall appoint one of the members of the Panel as chairman. Each person appointed as chairman shall serve for a term of office of one year and until that person's successor is appointed and qualified. Any vacancy occurring during a year shall be filled by the appointing officer for the remainder of the unexpired term of office.

(c) The Panel shall determine the percentage of all federal expenditures that are in compliance with the limits placed on the federal government by the states using the most recent data published by the federal government plus any additional information on other expenditures made but not disclosed by the federal government. No Federal expenditures shall be qualified for disbursement to the appropriate federal recipient from the Federal Tax Fund unless the use of those expenditures is made transparent to the Panel and to the

members of the General Assembly for the purpose of certifying the constitutionality of said expenditures.

50-37-5.

(a) The Federal Tax Fund is created in the state treasury. All federal tax moneys collected by the state on behalf of the federal government shall be deposited by the director into the Federal Tax Fund.

(b) The director, on a quarterly basis shall disburse the funds to the respective appropriate federal recipient provided that it has been determined by the Panel that all federal expenditures for the most recently published fiscal year were only for constitutional purposes. The percentage of federal appropriations that are in compliance with the limits placed on the federal government by the states in Section 8 of Article 1 of the Constitution of the United States of America, as determined by the Panel, shall be the same percentage of the Federal Tax Fund that the director shall disburse to the appropriate federal recipient. The remainder of the fund shall be withheld.

(c) Funds that the director withholds from each federal recipient plus any interest earned thereon shall be transferred quarterly from the Federal Tax Fund and deposited into the general fund for general use.

50-37-6

(a) Any person liable for any federal tax shall remit the tax when due along with the federal taxpayer number to the director for deposit into the Federal Tax Fund.

(b) All moneys collected pursuant to subsection (a) of this Code section shall be transmitted to the director who, as a fiduciary agent, shall credit the funds to the Federal Tax Fund on behalf of the person who remitted the tax.

(c) The director shall submit to the federal Internal Revenue Service the names and tax identification numbers of, and the date on which and amounts deposited by, persons liable for any federal tax so that the Internal Revenue Service can credit the state's taxpayers for federal tax obligations.

50-37-7.

Any person who is:

- (1) Liable for any federal tax who fails to forward federal tax moneys to the director; or
 - (2) Not required to pay a federal tax but pays it anyway or does not forward the voluntary amount to the director;
- shall be subject to penalties assessed pursuant to applicable federal or state statutes.

50-37-8.

In compliance with the Oath or Affirmation clause found in Article VI of the Constitution of the United States of America, the Governor, members of the General Assembly, judges, the Attorney General, the Secretary of State, the director, the state auditor, and all other state officers and employees shall implement this chapter regardless of any sanctions, threats, court action, or other pressure brought to bear by federal authorities.

50-37-9.

Any actions by the federal government, its agencies or agents, or the Congress of the United States against any person in this state for compliance with this chapter shall be considered an action against this state, and this state shall make an appropriate response to cause the action to cease and desist. This state shall take all necessary measures to recover from the federal government, its agencies or agents, or the Congress of the United States the reasonable costs of defending the action.

50-37-10.

This chapter shall apply to federal taxes collected after the date on which this chapter takes effect, and, because the 'Constitution, and the Laws of the United States *which shall be made in Pursuance thereof*; and all Treaties made, or which shall be made, *under the Authority* of the United States, shall be the supreme Law of the Land,' [emphasis added], this article shall be enforced retroactively to repeal any unconstitutional federal mandates that have been imposed on the state.

50-37-11.

The General Assembly, by simple majority vote in both houses, shall determine how the moneys transferred from the Federal Tax Fund to the general fund, including accrued interest, are to be used for the benefit of the people of the state. These moneys shall be used for the benefit of the people of Georgia only. Nothing in this Code section shall prohibit the General Assembly from authorizing all or a portion of the funds withheld from the appropriate federal agency be refunded to the federal taxpayers from whence it came and such refund shall not be considered a gratuity."

SECTION 2.

This Act shall become effective upon its approval by the Governor or upon its becoming law without such approval.

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SECTION 3.

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All laws and parts of laws in conflict with this Act are repealed.